

Order

Michigan Supreme Court
Lansing, Michigan

November 14, 2006

Clifford W. Taylor,
Chief Justice

ADM File No. 2006-39

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

Amendment of Rule 1.10
of the Michigan Rules
of Professional Conduct

On order of the Court, the need for immediate action having been found, the notice requirements of MCR 1.201 are dispensed with and the following amendment of Rule 1.10 of the Michigan Rules of Profession Conduct is adopted, effective immediately. Public comments on this amendment, however, may be submitted to the Supreme Court Clerk in writing or electronically until March 1, 2007, at: P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. This amendment will then be considered at a future public hearing following the comment deadline. All comments will be posted on the Court's website. When filing a comment, please refer to ADM File No. 2006-39.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 1.10 Imputed Disqualification: General Rule

- (a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9(a) or (c), or 2.2. If a lawyer leaves a firm and becomes associated with another firm, MRPC 1.10(b) governs whether the new firm is imputedly disqualified because of the newly hired lawyer's prior services in or association with the lawyer's former law firm.
- (b) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, is disqualified under Rule 1.9(b), unless:
 - (1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

- (2) written notice is promptly given to the appropriate tribunal to enable it to ascertain compliance with the provisions of this rule.
- (c) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer, and not currently represented by the firm, unless:
 - (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
 - (2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.
- (d) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

Staff Comment: This amendment clarifies that when an attorney associates with a new firm, the attorney's disqualification does not necessarily disqualify the attorney's new firm by imputed disqualification, if the new firm imposes timely and appropriate screening under MRPC 1.10(b). The amendment clarifies that MRPC 1.10(b) governs the issue of imputed disqualification following the transfer of an attorney to a new firm, which was the intent of the rule and has been the practice since the rule was adopted in 1988 and further amendments were adopted in 1990. This proposal was prompted by the decision issued in *Nat'l Union Fire Ins Co v Alticor, Inc*, ___ F3d ___; 2006 WL 2956522 (CA 6, 2006).

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 14, 2006

Corbin R. Davis
Clerk